[redacted]

(27,966)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 609.

ELDORADO COAL AND MINING COMPANY, PLAINTIFF IN ERROR,

vs.

HARRY W. MAGER, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF ILLINOIS.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 29, 1920.

1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable George T. Page, United States Circuit Judge for the Seventh Judicial Circuit, holding United States District Court by assignment, on 22nd day of October, in the year of our Lord one thousand nine hundred and twenty, being one of the days of the regular October Term of said Court, begun Monday, the fourth day of October, and of our Independence the 145th year.

Present: Honorable George T. Page, Circuit Judge. John J Bradley, U. S. Marshal. John H. R. Jamar, Clerk.

2 In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 33,368.

ELDORADO COAL AND MINING COMPANY

vs.

HARRY W. MAGER, Collector of Internal Revenue for the First District of Illinois.

Be it remembered, that the above entitled action was commenced by the filing of the following Declaration in the above entitled cause, in the office of the Clerk of the District Court of the United States, for the Northern District of Illinois, Eastern Division, on this the 13th day of July, 1920.

3 UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

Assumpsit. No. 33,368.

ELDORADO COAL AND MINING COMPANY

vs.

HARRY W. MAGER, Collector of Internal Revenue for the First District of Illinois.

Declaration.

Eldorado Coal & Mining Company, a corporation organized and existing under and by virtue of the laws of the State of Indiana,

complains of Harry W. Mager, Collector of Internal Revenue for the First District of the State of Illinois, defendant, summoned of a plea of trespass on the case on promises:

First Count.

1. For that whereas, plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Indiana, and is a citizen of the United States and of the State of Indiana; and defendant at the times more specifically hereinafter mentioned was and now is a resident and an inhabitant of the City of Chicago, in the State of Illinois, and of said Northern District of Illinois and Eastern Division thereof, and at the times more specifically hereinafter mentioned was and still is the duly appointed and qualified
4 Collector of Internal Revenue for the First District of the State of Illinois.

2. Plaintiff further avers that the sole business in which it was ever engaged,—the business in which it was engaged for many years prior to May, 1917,—was mining and selling bituminous coal; that the capital assets invested and employed in said business during all the time that plaintiff was thus engaged in business (other than accounts receivable and other cash assets) consisted of a coal mine, situated near the City of Eldorado, in the County of Saline, and State of Illinois, and the equipment and improvements making up the coal-mining plant used in operating said mine; that early in the year 1917 it decided to give up business and to distribute said capital assets among its stockholders; that thereupon, during the month of May, 1917, it sold its coal mine and said coal-mining plant, in fact all of its property except certain accounts receivable (and except, of course, its books of account) for the sum of $275,000.00 in cash, thus converting said capital assets into the form of money; that upon the carrying into effect of such sale it ceased transacting business; that from the date of said sale said accounts receivable and said books of account comprised the only property owned by plaintiff other than the proceeds of said sale; that prior to September 30th, 1917, plaintiff closed up its affairs by distributing all of said accounts receivable, or the proceeds thereof, and all of the proceeds of said sale, among its stockholders in proportion to their holdings of stock; that upon this liquidation of said capital assets plaintiff would also have given up its corporate charter and terminated its corporate existence had it not been deemed necessary that it remain in exist-
ence until the final determination by the Commissioner of
5 Internal Revenue (hereinafter called "the Commissioner") of the tax liability of plaintiff to the United States Government for income and excess profits taxes for certain fiscal periods, which tax liability had not yet been finally determined by the Commissioner.

3. Plaintiff further avers that after having sold said capital assets, consisting chiefly of said coal mine and coal-mining plant as aforesaid, and after having distributed the proceeds of such sale among

its stockholders, plaintiff, in order to comply with the provisions of the Revenue Acts of 1916 and 1917, in due course filed its income and excess profits tax returns for the fiscal period beginning April 1, 1917, and ending September 30, 1917; that said returns did not include in the gross income of plaintiff for said fiscal period any part of said sum of $275,000.00 received as the price of said capital assets; that the returns so filed showed the sum of $20.88 due from plaintiff for its income and excess profits tax for said fiscal period, and that this amount was promptly paid by plaintiff.

4. Plaintiff further avers that thereafter the Commissioner, acting in reliance upon the provisions of said Revenue Acts of 1916 and 1917, audited the books and records of plaintiff for the fiscal period ending March 31, 1917, and the fiscal period beginning April 1, 1917, and ending September 30, 1917; that on the basis of that audit, the Commissioner, on January 7, 1920, through the medium of an assessment letter, written on his behalf by G. V. Newton, Acting Assistant to the Commissioner, admitted in writing, that the United States Government was indebted to plaintiff in the sum of $1,366.82, on account of an overpayment of that amount made by plaintiff in paying its income and excess profits tax for said fiscal period
6 ending March 31, 1917; that the Commissioner, in said letter, also stated that he was about to assess against plaintiff an additional income and excess profits tax, for the fiscal period beginning April 1, 1917, and ending September 30, 1917, based, as is shown by said assessment letter, on the conclusion of the Commissioner that a taxable profit had been realized by the plaintiff by the conversion into money, on said winding-up sale, of said capital assets so invested and employed in said business; and that said assessment letter showed that the Commissioner was going to apply said admitted indebtedness of $1,366.82 to the payment of an equal amount of said additional income and excess profits tax, to be so assessed by the Commissioner for the fiscal period beginning April 1, 1917, and ending September 30, 1917.

5. Plaintiff further avers that taking the fair market value, as of March 1, 1913, of the capital assets so invested and employed in said business, adding the cost of additions and betterments, subtracting depreciation and depletion to the date of sale, and using the resulting amount as a basis, it appears that $5,986.02, of said sale price of $275,000.00, represented an appreciation, since March 1, 1913, in the money value of the coal mine and coal-mining plant which, as aforesaid, constituted by far the greatest part of said capital assets, so invested and employed in said business, which said appreciation was converted by said sale into $5,986.02 in money.

6. Plaintiff further avers that on, to-wit, February 10, 1920, the Commissioner assessed against plaintiff in accordance with said assessment letter, an additional income and excess profits tax, for the fiscal period beginning April 1, 1917, and ending September 30, 1917, that that part part of the tax so assessed which was based
7 & 8 on said appreciation of $5,986.02 in the money value of said

coal mine and said coal-mining plant amounted to $3,073.16; that in making such assessment the Commissioner, in accordance with said assessment letter, applied said admitted indebtedness of the Government to plaintiff of $1,366.82 to the partial payment of said tax of $3,073.16, leaving remaining of said $3,073.16 a balance of $1,706.34 subject to demand by the Collector at Chicago.

7. Plaintiff further avers that on, to-wit, March 3, 1920, defendant, as Collector of Internal Revenue for the First District of Illinois, under the provisions of the Revenue Acts of 1916 and 1917 served on plaintiff a written "notice and demand for tax," thereby demanding the payment by plaintiff at defendant's office in Chicago, Illinois, on or before March 10, 1920, of an additional income and excess profits tax for the fiscal period beginning April 1, 1917, and ending September 30, 1917, which said additional tax was the additional tax which was assessed, as aforesaid, on, to-wit, February 10, 1920, and included said additional tax of $1,706.34; that this notice and demand stated that failure to pay, on or before March 10, 1920, the sum demanded, would "cause a five per cent penalty to accrue, with interest at one per cent per month from due date until paid"; that plaintiff thereupon made inquiry at the office of defendant, asking whether it would not be possible to secure a short extension of the time within which payment of the sum demanded would have to be made, and was informed that there was no way to secure such an extension and that unless payment was made on or before March 10, 1920, of the entire amount demanded (except such part thereof as should be covered by a bona fide claim for abatement, duly executed and filed) the five per cent penalty and the interest charge
9 would surely accrue against plaintiff.

8. Plaintiff further avers that on, to-wit, March 10, 1920, solely to avoid the threatened imposition of said penalties and interest for failure to pay, and to avoid persecution and distraint and sale of its property, and under duress, compulsion and coercion, it paid to defendant said sum of $1,706.34 so assessed against, and demanded from plaintiff, as aforesaid, as an additional tax for the fiscal period beginning April 1, 1917, and ending September 30, 1917; but said payment was made under protest, and at the same time plaintiff protested, in writing, that no income or excess profits tax was due from it by reason of the receipt of said sum of $5,986.02, and that defendant was without authority to collect and exact said sum of $1,706.34, and that plaintiff was paying the same under protest and compulsion; that the sole basis for this additional tax of $1,706.34, so paid under protest, was the receipt by plaintiff of said $5,986.02 in money, being such part of the price received by plaintiff, on said winding-up sale of the capital assets invested and employed in said business, as represented said appreciation in money value, from March 1, 1913, to date of sale, of said coal mine and coal-mining plant; and that because of its said basis said additional tax of $1,706.34 is contested by plaintiff as illegal, unconstitutional and void.

9. Plaintiff further avers that thereafter, on, to-wit, April 10, 1920, plaintiff filed with defendant, for transmission to the Commissioner, its appeal and application for a refund of said sum of $1,706.34 (so assessed and paid under protest), in manner and form as provided in Sections 3220, 3226 and 3228 of the Revised Statutes of the
10 United States, the other provisions of law in that regard, and the regulations of the Treasury Department established in pursuance thereof, which said application and appeal was thereafter, to-wit, on June 25, 1920, rejected and denied by the Commissioner.

10. Plaintiff further avers, as its conclusion of law, and for the purpose of preserving its claim that a constitutional question is involved in this suit, and of protecting its right to a direct appeal to the Supreme Court of the United States by reason thereof, in case said appeal shall be necessary, that said Revenue Acts of 1916 and 1917, under which said sum of $1,706.34 was assessed and its payment compelled, as aforesaid, in so far as said acts may be construed to confer power to make such assessment or to compel such payment, are invalid and void, and do not confer any lawful authority in the premises, and are in that regard in violation of Article I, Section 2, clause 3, of the Constitution of the United States, to the effect that "direct taxes shall be apportioned among the several States," and of Article I, Section 9, clause 4 thereof, to the effect that "no capitation or other direct tax shall be laid unless in proportion to the census or enumeration hereinbefore directed to be taken; that the money received on converting into money said appreciation in money value of said capital assets, in connection with the winding-up of said business, did not in whole or in any part thereof constitute income to the plaintiff and that, therefore, the tax, so as aforesaid sought to be assessed thereon, was not exempted from the above provisions of the Constitution by the Sixteenth Amendment to said Constitution, and plaintiff hereby calls into question the constitutionality of said Revenue Acts of 1916 and 1917 and all the provisions thereof to the extent that any such provision, properly
11 construed, purports to authorize said assessment or the collection of the amount so assessed.

11. Plaintiff further avers that this is a suit of a civil nature at common law arising under the Constitution and laws of the United States, and particularly under the laws of the United States providing for internal revenue.

12. Wherefore defendant became, on, to wit, March 10, 1920, indebted to plaintiff in the sum of $1,706.34 for money received by defendant from plaintiff and held by defendant to the use of plaintiff, and thereupon, on the day last aforesaid, an obligation arose upon a promise implied in law to pay said sum to plaintiff, with interest thereon at the legal rate, on the part of defendant, and said promise so arising by implication of law is the promise of defendant first above set forth in this count.

Second Count.

1-6. To avoid repetition, plaintiff here refers to and by reference makes a part of this second count, as if here incorporated in full, the allegations above set out in paragraphs 1 to 6, inclusive, of the first count of this declaration.

7. Plaintiff further avers that on, to wit, March 3, 1920, defendant, as Collector of Internal Revenue for the First District of Illinois, under the provisions of the Revenue Acts of 1916 and 1917, served on plaintiff a written "notice and demand for tax," thereby demanding the payment by plaintiff at defendant's office in Chicago, Illinois, on or before March 10, 1920, of all of said additional income and excess profits tax so stated in said assessment letter of January 7, 1920, to have been found due from plaintiff for
12 the fiscal period beginning April 1, 1917, and ending September 30, 1917, based on the $5,986.02 which plaintiff had received from the conversion into money of the appreciation since March 1, 1913, of the money value of its coal mine and coal-mining plant, except $1,366.82, namely $1,706.34 ($3,073.16—$1,366.82); that the payment of this $1,366.82 of said additional tax was not demanded for the reason that, as aforesaid, in making the assessment on which said demand was based, the Commissioner, in accordance with said assessment letter, treated said $1,366.82 of said additional tax as paid by his applying to the payment thereof said sum of $1,366.82 so admittedly due from the Government to plaintiff; that the sole basis for that part ($1,366.82) of said additional tax, which was so paid by applying to its payment, as aforesaid, this admitted indebtedness of $1,366.82 of the Government to plaintiff, without the consent of plaintiff and without any opportunity being afforded to it to protest or to object, was the receipt by plaintiff of said $5,986.02 in money, being such part of the price received by plaintiff on said winding-up sale of said capital assets as represented said appreciation in money value, from March 1, 1913, to date of sale, of said coal mine and coal-mining plant; and that because of its said basis said additional tax, to the payment of which this admitted indebtedness of the Government to plaintiff was applied, is contested by plaintiff as illegal, unconstitutional and void.

8. Plaintiff further avers that by applying, without the consent of plaintiff, and without any opportunity being afforded to it to protest or to object, said admitted indebtedness of the Government to plaintiff of $1,366.82 to the payment of said $1,366.82 of said additional tax, instead of paying such admitted indebtedness to plaintiff and demanding that it pay to the Collector of Internal
13 Revenue said $1,366.82 of said additional tax, said demand being backed up by duress and the compulsion and coercion of penalties, interest and the like, thus allowing the payment of the same to be made by plaintiff itself on its own behalf, and to be made under protest, on the ground of the illegality, unconstitutionality

and invalidity of such additional tax, the Commissioner made impossible and unnecessary, as a condition precedent to bringing suit against said Collector for the recovery of said $1,366.82 of said additional tax, for the plaintiff to show that said amount of $1,366.82 so overpaid by it was paid under duress, compulsion, cœrcion or protest; and that, therefore, by virtue of the foregoing, the necessity, as such condition precedent, of payment under duress, compulsion, coercion or protest, has been waived, as a matter of law, and the lack of such payment is, therefore, no defense to this count.

9. Plaintiff further avers that thereafter on, to wit, April 10, 1920, plaintiff filed with defendant, for transmission to the Commissioner, its appeal and application for refund of said $1,366.82 of said additional tax (so paid as aforesaid by the application by the Commissioner to its payment of said admitted indebtedness of the Government to plaintiff of $1,366.82) in manner and form as provided in Sections 3220, 3226 and 5228 of the Revised Statutes of the United States, the other provisions of law in that regard, and the regulations of the Treasury Department established in pursuance thereof, which said application and appeal was thereafter on, to wit, June 25, 1920, rejected and denied by the Commissioner.

10. Plaintiff further avers, as its conclusion of law and for the purpose of preserving its claim that a constitutional question
14 is involved in this suit, and of protecting its right to a direct appeal to the Supreme Court of the United States by reason thereof, in case said appeal shall be necessary, that said Revenue Acts of 1916 and 1917, under which said $1,366.82 of said additional tax (to the payment of which said $1,366.82 so admittedly due, as aforesaid, by the Government to plaintiff was applied) was assessed and paid as aforesaid, in so far as said acts may be construed to confer power to make such assessment or such payment, are invalid and void and do not confer any lawful authority in the premises and are in that regard in violation of Article 1, Section 2, clause 3, of the Constitution of the United States, to the effect that "direct taxes shall be apportioned among the several states," and of Article 1, Section 9, clause 4 thereof, to the effect that "no capitation or other direct tax shall be laid unless in proportion to the census or enumeration hereinbefore directed to be taken"; that the money received on converting into money said appreciation in money value of said capital assets did not in whole or in any part thereof constitute income to the plaintiff and that, therefore, the tax so as aforesaid sought to be assessed thereon was not exempted from the above provisions of the Constitution by the Sixteenth Amendment to said Constitution, and plaintiff hereby calls into question the constitutionality of said Revenue Acts of 1916 and 1917 and all the provisions thereof, to the extent that any such provision properly construed purports to authorize said assessment, or the payment of said amount, so assessed, as aforesaid, by the application to such payment of said $1,366.82 admittedly due by the Government to plaintiff.

11. Plaintiff further avers that this is a suit of a civil nature at common law arising under the Constitution and laws of the United States, and particularly under the laws of the United States providing for internal revenue.

12. Wherefore defendant became on, to-wit, March 10, 1920, indebted to plaintiff in the sum of $1,366.82 for money received by defendant from plaintiff and held by defendant to the use of plaintiff, and thereupon on the day last aforesaid, an obligation arose upon a promise implied in law to pay said sum to plaintiff, with interest thereon at the legal rate, on the part of defendant, and said promise so arising by implication of law is the promise of defendant now sued on in this count.

Nevertheless, defendant, though often requested, not regarding his said promises, has not yet paid to plaintiff said several sums of money above mentioned, or any or either of them, or any part thereof, but to pay the same or any part thereof to plaintiff the defendant has hitherto altogether refused and still does refuse.

To the damage of plaintiff of $5,000.00 and therefore plaintiff brings suit, etc.

BUTLER, LAMB, FOSTER & POPE,
Plaintiff's Attorneys.

(Endorsed:) Filed Jul. 13, 1920. John H. R. Jamar, clerk.

And on to-wit: the seventh day of August, 1920, came Defendant by Charles F. Clyne, United States Attorney, and filed in the Clerk's office of said court, in said entitled cause, a certain Demurrer in words and figures following to-wit:

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court Thereof, July Term, A. D. 1920.

No. 33368.

ELDORADO COAL AND MINING COMPANY, Plaintiff,

v.

HARRY W. MAGER, Collector of Internal Revenue of the United States of America for the First District of Illinois, Defendant.

Demurrer.

And the said Harry W. Mager, Collector of Internal Revenue of the United States of America for the First District of Illinois, by Charles F. Clyne, United States Attorney for the Eastern Division of the Northern District of Illinois, comes and defends the wrong and injury when, etc., and says that the said declaration and the matters

therein contained in the manner and form as above stated and set forth, are not sufficient in law for the said plaintiff to have and maintain its aforesaid action against him, the said defendant, and that he is not bound to answer the same, and this he is ready to verify.

Wherefore, for want of sufficient declaration in this behalf the said Harry W. Mager prays for judgment, and that the said plaintiff may be barred from having or maintaining its aforesaid action against him, etc.

CHARLES F. CLYNE,
United States Attorney.

(Endorsed:) Filed Aug. 7, 1920. John H. R. Jamar, clerk.

16½ And on to-wit: the twenty-second of October, A. D. 1920, in the record of proceedings thereof in said entitled cause before the Hon. George T. Page, Circuit Judge, appears the following judgment order to-wit:

17 In the District Court of the United States, Northern District of Illinois, Eastern Division.

Friday, October 22, A. D. 1920.

Present: Honorable George T. Page, circuit judge.

No. 33368.

ELDORADO COAL AND MINING COMPANY, Plaintiff,

vs.

HARRY W. MAGER, Collector of Internal Revenue for the First District of Illinois, Defendant.

Judgment.

This cause having come on to be heard by this court at a stated term thereof on the demurrer of the defendant to the declaration of the plaintiff herein, after argument of counsel for the defendant in support of the said demurrer and counsel for the plaintiff in opposition thereto, the court, being fully advised in the premises, doth find that said declaration and the matters and things therein contained are not sufficient in law to maintain the action of the plaintiff, and it is therefore

Ordered that the said demurrer be and the same hereby is in all respects sustained; and the plaintiff having thereupon elected to abide and stand by its said declaration and by each count thereof, it is

Ordered and adjudged that the plaintiff take nothing by its writ, and that said defendant go hence without day and have and recover of said plaintiff his costs as taxed, and have execution therefor.

GEO. T. PAGE, *Judge.*

17½ And on to-wit: the twenty-second day of October, 1920, came Plaintiff by its Attorneys and filed in the Clerk's office of said Court in said entitled cause, a certain Petition in words and figures following to-wit:

18 In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 33368.

ELDORADO COAL AND MINING COMPANY, Plaintiff,

vs.

HARRY W. MAGER, Collector of Internal Revenue for the First District of Illinois, Defendant.

Petition for Writ of Error.

To the Supreme Court of the United States:

The above named Eldorado Coal and Mining Company, now appears before this Court and complains that in the record and proceedings had in this cause, and also in the rendition of the judgment in the above entitled cause in the District Court of the United States for the Northern District of Illinois, Eastern Division on the 22nd day of October, 1920, manifest error hath happened to the great damage of said plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, the said plaintiff hereby prays for the allowance of a writ of error, for an order fixing the amount of the bond for a supersedeas in said cause, and for such other order and process as may cause the aforementioned errors and judgment to be corrected by the said Supreme Court of the United States.

Dated Chicago, Illinois, October —, 1920.

BUTLER, LAMB, FOSTER AND POPE,
Attorneys for Plaintiff.

(Endorsed:) Filed Oct. 22, 1920, at 2.06 o'clock P. M. John H. R. Jamar, clerk.

18½ And on to-wit: the twenty-second day of October, 1920, came Plaintiff by its attorneys and filed in the Clerk's office of said Court, in said entitled cause, a certain Assignment of Errors in words and figures following to-wit:

19 In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 33368.

ELDORADO COAL AND MINING COMPANY, Plaintiff,

vs.

HARRY W. MAGER, Collector of Internal Revenue for the First District of Illinois, Defendant.

Assignment of Errors.

The plaintiff above named hereby assigns error to the record and proceedings and to the entry of the judgment in the above entitled cause, as follows:

1. The Court erred in sustaining the demurrer to the declaration.

2. The Court erred in not overruling the demurrer to the declaration.

3. The Court erred in sustaining the demurrer to the first count of the declaration.

4. The Court erred in not overruling the demurrer to the first count of the declaration.

5. The Court erred in sustaining the demurrer to the second count of the declaration.

6. The Court erred in not overruling the demurrer to the second count of the declaration.

7. The Court erred in directing that final judgment should be entered in favor of the defendant.

BUTLER, LAMB, FOSTER AND POPE,
Attorneys for Plaintiff.

(Endorsed:) Filed Oct. 22, 1920, at 2.06 o'clock P. M. John H. R. Jamar, clerk.

19½. And on to-wit: October twenty-second, 1920, came Eldorado Coal and Mining Company, Plaintiff as principal, and American Surety Company of New York as surety, and filed in the Clerk's office of said Court, in said entitled cause, a certain Bond on writ of error in words and figures following to-wit:

20 In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 33368.

ELDORADO COAL & MINING COMPANY, Plaintiff,

vs.

HARRY W. MAGER, Collector of Internal Revenue for the First District of Illinois, Defendant.

Know all men by these presents that we, Eldorado Coal & Mining Company, a corporation of the State of Indiana, as principal, and American Surety Company, of New York, a corporation of the State of New York, as surety, are held and firmly bound unto the above named Harry W. Mager, United States Collector of Internal Revenue for the First District of the State of Illinois, in the sum of Two Hundred and Fifty ($250.00) Dollars, for the payment of which sum, well and truly to be made, we, the said principal and the said surety bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 13th day of October, 1920.

The condition of this obligation is such that, whereas, the above bounden Eldorado Coal and Mining Company has prosecuted a writ of error to the Supreme Court of the United States to reverse the final judgment rendered in the above entitled cause by the District Court of the United States in and for the Northern District of Illinois, Eastern Division; now, therefore, if said Eldorado Coal & Mining Company shall prosecute said writ to effect and
21 shall answer all damages and costs which the said Supreme Court of the United States shall adjudge against it in case the said judgment shall be affirmed, then this obligation shall be void, otherwise to remain in full force and effect.

[SEAL.] ELDORADO COAL & MINING COMPANY.
By JOHN C. HICK, *Vice President.*

Attest:
F. S. SEAGRAVE, *Secretary.*

AMERICAN SURETY COMPANY OF NEW YORK,
By BEN H. DAVENPORT,
Res. Vice-Pres.

Attest:

Attest:
W. W. STEINER,
Res. Asst. Secy.

STATE OF ILLINOIS,
County of Cook, ss:

I, William D. Upchurch, a Notary Public in and for said County, in the State aforesaid, do hereby certify that John C. Hick and

F. S. Seagrave, personally known to me to be the Vice-President and the Secretary respectively of the Eldorado Coal & Mining Company, an Indiana corporation, appeared before me this day in person and acknowledged that they signed, sealed and delivered the foregoing instrument as their free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and affixed my notarial seal this 13th day of October, A. D. 1920.

[SEAL.] WILLIAM D. UPCHURCH,
Notary Public.

Bond approved Oct. 22/1920.
GEO. T. PAGE,
Judge.

(Endorsed:) Filed Oct. 22, 1920. John H. R. Jamar, clerk.

22 And on to-wit: the twenty-second day of October, 1920, in the record of proceedings thereof in said entitled cause before the Hon. George T. Page, Circuit Judge, appears the following order to-wit:

23 In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 33368.

ELDORADO COAL AND MINING COMPANY, Plaintiff,

vs.

HARRY W. MAGER, Collector of Internal Revenue for the First District of Illinois, Defendant.

Order Allowing Writ of Error.

Friday, October 22, A. D. 1920.

Present: Honorable George T. Page, Circuit Judge.

This cause coming on to be heard at a stated term of said court, and it appearing that the above named plaintiff Eldorado Coal and Mining Company has filed a petition for a writ of error and an assignment of errors in the above entitled cause, and has also filed a bond in the sum of Two Hundred Fifty ($250.00) Dollars, and the said bond having been fully approved by the court, it is therefore

Ordered that a writ of error be and the same is hereby allowed to have reviewed in the Supreme Court of the United States the record and proceedings and the judgment heretofore on the 22 day of October, 1920, rendered by this court in said cause; and it is further

Ordered that said bond shall operate as a supersedeas bond.

GEO. T. PAGE,
Judge.

24 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between Eldorado Coal and Mining Company, and Harry W. Mager, Collector of Internal Revenue for the First District of Illinois, a manifest error hath happened, to the great damage of the said Eldorado Coal and Mining Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 22nd day of October, in the year of our Lord one thousand nine hundred and 20.

[Seal of Dist. Court U. S., Northern Dist. Illinois.]

JOHN H. R. JAMAR,
Clerk of the District Court of the United States for the Northern Dist. of Illinois.

Allowed by

GEORGE T. PAGE,
Judge.

[Endorsed:] Supreme Court of the United States. Eldorado Coal and Mining Company vs. Harry W. Mager, collector of internal revenue, etc. Writ of error. Copy deposited for the defendant in error in the Clerk's Office, U. S. Circuit Court, Northern District of Illinois.

24½ And on to-wit: the thirtieth day of October, 1920, came Plaintiff by its Attorneys and filed in the Clerk's office of said Court, in said entitled cause a certain Præcipe in words and figures following to-wit:

25 In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 33368.

ELDORADO COAL AND MINING COMPANY, Plaintiff,

vs.

HARRY W. MAGER, Collector of Internal Revenue for the First District of Illinois, Defendant.

Præcipe for Record.

To the Clerk of the United States District Court,
Northern District of Illinois,
Eastern Division:

You will please prepare a transcript of the record in the above entitled cause to be filed with the Clerk of the United States Supreme Court under the writ of error allowed by this court, and include therein the following:

1. Declaration, filed July 13, 1920.
2. Summons, issued July 13, 1920, and return thereon.
3. Demurrer (to declaration), filed August 7, 1920.
4. Judgment order, entered October 22, 1920.
5. Petition for writ of error, filed October 22, 1920.
6. Assignment of errors, filed October 22, 1920.
7. Bond on writ of error, filed October 22, 1920, and approval thereof.
8. Order, allowing writ of error and supersedeas, entered October 22, 1920.

26 9. Writ of error, issued October 22, 1920.

10. Citation, and proof of service thereof, filed October 30, 1920.

Dated October 30, 1920.

BUTLER, LAMB, FOSTER & POPE,
Attorneys for Plaintiff.

(Endorsed:) Filed Oct. 30, 1920. John H. R. Jamar, clerk.

27 NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, John H. R. Jamar, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Præcipe filed in this Court in the cause entitled Eldorado Coal and Mining Company vs. Harry W. Mager, Collector of Internal Revenue for the

First District of Illinois, as the same appear from the original records and files thereof, now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 3rd day of November, A. D. 1920.

[Seal of Dist. Court U. S., Northern Dist. Illinois.]

JOHN H. R. JAMAR,
Clerk.

28 UNITED STATES OF AMERICA, ss:

The President of the United States to Harry W. Mager, collector of internal revenue for the first district of Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein Eldorado Coal and Mining Company is plaintiff in error and you are defendant in error to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George T. Page, Judge of the District Court of the United States, this 22 day of October, in the year of our Lord one thousand nine hundred and Twenty.

GEO. T. PAGE,
Judge.

29 Received a copy of the within citation this 20th day of October, A. D. 1920.

CHARLES F. CLYNE,
Attorney for Defendant in Error.

[Endorsed:] No. 33368. Supreme Court of the United States. Eldorado Coal and Mining Co., plaintiff in error, vs. Harry W. Mager, defendant in error. Citation to the Supreme Court of the United States. Filed Oct. 30, 1920, at — o'clock — M. John H. R. Jamar, clerk.

Endorsed on cover: File No. 27,966. N. Illinois D. C. U. S. Term No. 699. Eldorado Coal and Mining Company, plaintiff in error, vs. Harry W. Mager, collector of internal revenue for the first district of Illinois. Filed November 6th, 1920. File No. 27,966.